

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

for the calendar years

1945-1946

MAINE STATE
LIBRARY

In the memo from Mr. Allen, dated January 15, 1945, he quotes Chapter 144, Section 2 (k) of the Public Laws of 1935, as follows:

“All moneys received by the commission shall be deposited with the treasurer of state, who shall maintain a separate fund which shall be used for the continued maintenance and development of said parks.”

Chapter 144 of the Public Laws of 1935 was repealed by the legislature in September, 1944. The Revision Committee rewrote Section 2 of Chapter 144, P. L. 1935, which is now incorporated in Section 23 of Chapter 32, R. S. 1944, and I note that paragraph (k) was left out of Section 23, and all of that section of Chapter 144, P. L. 1935, was repealed except paragraph (g) of said Section 2, which was the interpretation clause of said Act.

In regard to the amount lapsed by the Controller in the amounts of \$38.41 on June 30, 1943, and \$30.44 on June 30, 1944, it is my opinion that this revenue should not have been lapsed, and that future balances existing because of revenues received from the State parks and memorials should be carried over to the next fiscal year.

RALPH W. FARRIS
Attorney General

July 18, 1945

To Charles P. Bradford, Park Commission
Re: Lapsing of Funds

Referring to my memo of July 11, 1945, I wish to change said memo, in that I stated that it was my opinion that the legislature repealed paragraph (k) of Section 2 of Chapter 144, P. L. 1935, inasmuch as my attention has been called to the fact that that particular provision of law is now incorporated in Section 25 of Chapter 32, R. S. 1944, and of course is now in effect.

This strengthens my opinion that the amounts on hand at the close of the fiscal year, which were taken in by the Park Commission after the appropriation had been expended, should not lapse, but should be carried over to the next fiscal year for the continued maintenance and development of park areas.

RALPH W. FARRIS
Attorney General

July 18, 1945

To Fred M. Berry, State Auditor
Re: Overlay Assessed by Municipalities

The subject of your memorandum of June 11th relates to the assessment of an overlay by assessors in towns of the State, and your question is whether an assessment is proper, so long as the overlay is within the 5% allowed by statute.

Chapter 81, Section 49, R. S. 1944, reads as follows:

“The assessors may assess on the polls and estates such sum above the sum committed to them to assess, not exceeding 5% thereof, as a fractional division renders convenient, and certify that fact to their town treasurer.”

The first statute on the subject, enacted in 1821, Chapter 113, Section 14, was as follows:

“Be it further enacted, That the Assessors for any town or plantation may and are hereby authorized and empowered to apportion on the polls and estates according to law, such additional sum over and above the precise sum to them committed to assess, as any fractional division of such precise sum may render convenient in the apportionment thereof, not exceeding five per centum on the sum so committed; and it shall be the duty of such assessors to certify such town or plantation Treasurer thereof.”

This was taken from the statutes of the Commonwealth of Massachusetts, the language of which was practically the same; and the statute in the present Revision and in earlier revisions is a condensation of this original section on the subject, the meaning of which would be the same, the intent being merely to condense it.

In *Alvord v. Cullen*, 20 Pick. (Mass.) 418 (1838) at page 423, the Massachusetts Court said of its act:

“The practice of *overlaying* prevailed and was general, long before the above statute was enacted. It is not only convenient but indispensable, to avoid impracticable fractional divisions, *and to guard against deficiencies.*” (Emphasis of the last clause ours.)

This case is also authority for the proposition that if the overlay is within 5%, the assessment is good. See also *Lord v. Parker*, 83 Maine 531. It would thus seem that the only limitation is that the 5% shall not be exceeded.

I am therefore of the opinion that a tax assessed would be valid, if the overlay was not in excess of 5% of the sum committed to the assessors for assessment.

ABRAHAM BREITBARD
Deputy Attorney General

July 18, 1945

To Francis G. Buzzell, Chief, Division of Animal Industry

You ask for an interpretation of the word “control” in the third line of Section 66, Chapter 27, R. S. 1944, and it is my opinion that the word “control” in this connection means that situation where the Federal Government has full control of the cattle being shipped into this State from any other State or country. I do not believe that the meaning should be construed to include cattle imported from Canada and subject to